

(1) A change has occurred in the operation of the land after the last constitution or reconstitution and as a result of such change the farm does not meet the conditions for constitution of a farm as set forth in paragraph (b) except that no reconstitution shall be made if the county committee determines that the primary purpose of the change in operation is to establish eligibility to transfer allotments subject to sale or lease;

(2) The farm was not properly constituted under the applicable regulations in effect at the time of the last constitution or reconstitution;

(3) An owner requests in writing that the owner's land no longer be included in a farm which is composed of tracts under separate ownership;

(4) The county committee determines that the farm was reconstituted on the basis of false information furnished by the owner or farm operator;

(5) The county committee determines that the tracts of land included in a farm are not being operated as a single farming unit;

(6) An owner of a farm, constituted as a single farming unit prior to 1978, which is comprised of land located in two or more counties for which there is a quota or allotment established for such farm and such quota or allotment is subject to lease and transfer restrictions across county lines, requests in writing that the farm be reconstituted by dividing the tracts. The resulting farms shall be administratively serviced by the county office serving the county in which the land is geographically located; or

(7) Land is sold for or devoted to non-agricultural commercial or industrial uses; however, a reconstitution is not required and allotments, quotas and acreages may remain with the farm if either of the following apply:

(i) The land is already devoted to residential, recreational, industrial or commercial buildings; or

(ii) The owner would qualify to use the landowner designation method of division in accordance with § 718.205 or the allotments and quotas can be transferred by sale or owner in accordance with this part and parts 723 or 729 of this chapter and the owner of the parent farm and the purchaser file a

signed written memorandum of understanding before Form FSA-476 or Form MQ-24 is issued, stating that the land will be devoted immediately or within 3 years to:

(1) Nonagricultural commercial uses; or

(2) Recreational, residential, industrial or non-farm commercial uses.

(d) Notwithstanding the provisions of paragraphs (c)(1) through (c)(7), a reconstitution shall not be approved if the county committee determines that the primary purpose of the reconstitution is to:

(1) Circumvent the provisions of part 12 of this title; or

(2) Circumvent any other chapter of this title.

[61 FR 37552, July 18, 1996, as amended at 65 FR 7953, Feb. 16, 2000]

#### **§ 718.202 Determining the land constituting a farm.**

(a) In determining the constitution of a farm, consideration shall be given to provisions such as ownership and operation. For purposes of this part, the following rules shall be applicable to determining what land is to be included in a farm.

(b) A minor shall be considered to be the same owner or operator as the parent or court-appointed guardian (or other person responsible for the minor child) unless:

(1) The minor child is a producer on a farm;

(2) Neither the minor's parents nor guardian has any interest in the minor's farm or production from the farm;

(3) The minor establishes and maintains a separate household from the parent or guardian;

(4) Personally carries out the farming activities in the operation; and

(5) Maintains a separate accounting for the farming operation.

(c) Notwithstanding paragraph (b) of this section, a minor shall not be considered to be the same owner or operator as the parent or court-appointed guardian if the minor's interest in the farming operation results from being the beneficiary of an irrevocable trust and ownership of the property is vested in the trust or the minor.

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(d) A life estate tenant shall be considered to be the owner of the property for their life.

(e) A trust shall be considered to be an owner with the beneficiary of the trust; except a trust can be considered a separate owner or operator from the beneficiary, if the trust:

(1) Has a separate and distinct interest in the land or crop involved;

(2) Exercises separate responsibility for the separate and distinct interest; and

(3) Maintains funds and accounts separate from that of any other individual or entity for the interest.

### § 718.203 County committee action to reconstitute a farm.

Action to reconstitute a farm may be initiated by the county committee, the farm owner, or the operator with the concurrence of the owner of the farm. Any request for a farm reconstitution shall be filed with the county committee.

### § 718.204 Reconstitution of allotments, quotas, and acreages.

(a) Farms shall be reconstituted in accordance with this subpart when it is determined that the land areas are not properly constituted and, to the extent practicable, shall be based on the facts and conditions existing at the time the change requiring the reconstitution occurred.

(b) Reconstitutions of farms subject to a production flexibility contract in accordance with part 1412 of this title will be effective for the current year if initiated on or before July 1 of the fiscal year.

(c) For tobacco and peanut farms, a reconstitution will be effective for the current year for each crop for which the reconstitution is initiated before the planting of such crop begins or would have begun.

(d) Notwithstanding the provisions of paragraph (b) and (c) of this section, a reconstitution may be effective for the current year if the county committee, with the concurrence of the State committee, determines that the purpose of the request for reconstitution is not to perpetrate a scheme or device the effect of which is to avoid the statutes

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and regulations governing commodity programs found in this title.

### § 718.205 Rules for determining farms, allotments, quotas, and acreages when reconstitution is made by division.

(a) The methods for dividing farms, allotments, quotas, and acreages in order of precedence, when applicable, are estate, designation by landowner, contribution, agricultural use, cropland, and history. The proper method shall be determined on a crop by crop basis.

(b)(1) The estate method is the proration of allotments, quotas, and acreages for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the allotments, quotas, and acreages for that tract shall be determined by using one of the methods provided in paragraphs (c) through (g) of this section.

(2) Allotments, quotas, and acreages shall be divided in accordance with a will, but only if the county committee determines that the terms of the will are such that a division can reasonably be made by the estate method.

(3) If there is no will or the county committee determines that the terms of a will are not clear as to the division of allotments, quotas, and acreages, such allotments, quotas, and acreages shall be apportioned in the manner agreed to in writing by all interested heirs or devisees who acquire an interest in the property for which such allotments, quotas, and acreages have been established. An agreement by the administrator or executor shall not be accepted in lieu of an agreement by the heirs or devisees.

(4) If allotments, quotas, and acreages are not apportioned in accordance with the provisions of paragraph (b)(2) or (3) of this section, the allotments, quotas, and acreages shall be divided pursuant to paragraphs (d) through (g) of this section, as applicable.

(c)(1) If the ownership of a tract of land is transferred from a parent farm, the transferring owner may request that the county committee divide the allotments, quotas, and acreages, including historical acreage that has